

3 only
april

April 26, 1967

Clerk, United States District Court
United States Court House
Constitution Avenue & John Marshall Place
Washington, D. C. 20001

ATTENTION: Mrs. Castagna, Room 1802

Re: Hobson v. Hansen
No. 82-66

Dear Sir:

Enclosed please find check for \$1.25 to cover the cost of preparing the supplemental certified record in the above case. I understand that this supplemental record will be sent directly to the Clerk of the Supreme Court of the United States.

Very truly yours,

Jerry D. Anker

Enclosure

bc: William M. Kunstler, Esq.

Bill:

This supplemental record consists of the order granting your motion to extend time for filing the jurisdictional statement.

J.A.

April 25, 1967

2047

Clerk, United States District Court
United States Court House
Constitution Avenue & John Marshall Place
Washington, D. C. 20001

ATTENTION: Mrs. Canby, Room 1802

Re: Hobson v. Hansen
No. 65-25

Dear Sir:

Enclosed please find check for \$1.25 to cover the
cost of preparing the supplemental certified record in
the above case. I understand that this supplemental
record will be sent directly to the Clerk of the Supreme
Court of the United States.

Very truly yours,

Jerry D. Anker

Enclosure

cc: William M. Konster, Esq.

Bill:

This supplemental record consists of the order grant-
ing your motion to extend time for filing the jurisdictional
statement.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

JAN 4 1968

ROBERT M. WILSON
CLERK

JULIUS W. HOBSON et al., Plaintiffs

v.

Civil Action No. 82-66

CARL F. HANSEN et al., Defendants

ORDER

It appearing that by order of December 13, 1967, the United States Court of Appeals remanded the record in this case so that the District Court may supplement it by holding a further hearing on the motions to intervene filed by Carl F. Hansen, Reverend William D. Jackson, et al., and Lawrence A. Wilkinson; and

It further appearing that on January 2, 1968, counsel representing Defendant Carl C. Smuck and the proposed intervenors filed a motion to fix a date for the hearing on the motions to intervene and to stay other proceedings;

It is ORDERED that the hearing on the said motions be, and the same is hereby, set for 2:00 P.M. on Tuesday, January 23, 1968.

J
J. SKELLY WRIGHT
UNITED STATES CIRCUIT JUDGE*

January 4, 1968

*Sitting by designation pursuant to 28 U.S.C. § 291(c).

JAN 1 1968

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS W. ROSEN at al., Plaintiffs

Civil Action No. 82-85

CARL F. HANSEN at al., Defendants

ORDER

It appearing that by order of December 13, 1967, the United States Court of Appeals remanded the record in this case so that the District Court may supplement it by holding a further hearing on the motions to intervene filed by Carl F. Hansen, Reverend William G. Jackson, et al., and Lawrence A. Wilkinson; and

It further appearing that on January 2, 1968, counsel representing Defendant Carl F. Hansen and the proposed intervenors filed a motion to fix a date for the hearing on the motions to intervene and to stay other proceedings;

It is ORDERED that the hearing on the said motion be, and the same is hereby, set for 2:00 P.M. on Tuesday, January 23, 1968.

J. FRANKLYN WRIGHT
UNITED STATES DISTRICT JUDGE

January 4, 1968



*Sister by designation pursuant to 28 U.S.C. § 1792.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS W. HOBSON, individually and)
on behalf of JEAN MARIE HOBSON and)
JULIUS W. HOBSON, JR., et al,)

Plaintiffs)

v.)

Civil Action No. 82-66)

CARL F. HANSEN, Superintendent of)
Schools of the District of Columbia,)
THE BOARD OF EDUCATION OF THE)
DISTRICT OF COLUMBIA, et al,)

Defendants)

MOTION OF DEFENDANT, CARL C. SMUCK,
AND OF PROPOSED INTERVENORS TO FIX DATE FOR
HEARING OF MOTIONS TO INTERVENE AND TO STAY OTHER PROCEEDINGS

Come now

- (a) The defendant, Carl C. Smuck,
- (b) The proposed intervenor, Carl F. Hansen,
- (c) The proposed intervenor, Lawrence A. Wilkinson,
- (d) The proposed intervenors, William D. Jackson,

Margaret C. Carter, Katherine McK. Wilkinson, Charles Tait Trussell,
Woodley G. Trussell, Dr. Michael Mann Duffy, Caroline C. Duffy,
Reverend Ernest R. Stevenson, Robert E. Nelson, Barbara A. Nelson,
Van H. Seagraves, Eleanor Seagraves, John R. Immer, Marjory J.
Immer, Wm. E. Weld, Jr., Jane Weld, Richard A. Hendricks, Dawn C.
Hendricks, and Reverend and Mrs. Cleveland B. Sparrow,
and move the Court as follows:

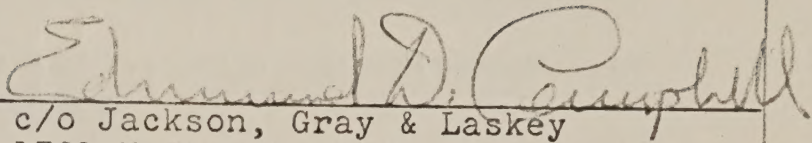
1. To fix an early date for hearing testimony on the
movants motions to intervene in this action for the purposes of
prosecuting an appeal from this Court's judgment of June 19, 1967.

2. To stay all other proceedings in this action until
the United States Court of Appeals has relinquished jurisdiction

hereof.

F. Joseph Donohue
Thomas S. Jackson
Edmund D. Campbell
John L. Laskey

By

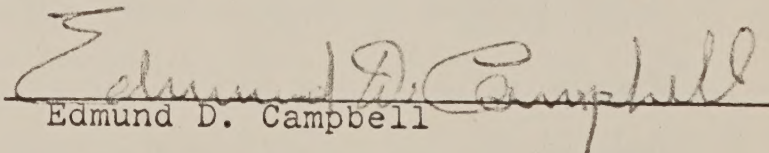


c/o Jackson, Gray & Laskey
1701 K Street, N.W.
Washington, D.C. 20006
628-0480

Attorneys for Movants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion, together with memorandum of points and authorities in support thereof, was mailed this 2nd day of January, 1968, to William M. Kunstler, Esquire, and Jerry D. Anker, Esquire, Attorneys for Plaintiffs, 1001 Connecticut Avenue, N.W., Washington, D.C. 20036; Honorable Charles T. Duncan, Corporation Counsel for the District of Columbia, District Building, Washington, D.C. 20004; to David G. Bress, Esquire, United States Attorney for the District of Columbia, United States Courthouse, Washington, D.C., 20001; and to William M. Kunstler, 511 Fifth Avenue, New York City, New York.


Edmund D. Campbell

In The
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. _____

JULIUS W. HOBSON, et al.,

Appellants,

v.

CARL F. HANSEN, et al.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Pursuant to Rule 53(1) of the Rules of this Court,
appellants respectfully move for leave to proceed in forma
pauperis. An affidavit in support of this motion is
attached.

William M. Kunstler
511 Fifth Avenue
New York, New York 10017

Attorney for Appellants

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No.

JULIUS W. ROSEN, et al.,

Appellants,

v.

CARL F. HANSEN, et al.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Pursuant to Rule 23(1) of the Rules of this Court,

appellants respectfully move for leave to proceed in forma

pauperis. An affidavit in support of this motion is

attached.

William M. Kunstler
311 Fifth Avenue
New York, New York 10017

Attorney for Appellants

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. _____

JULIUS W. HOBSON, et al.,

Appellants,

v.

CARL F. HANSEN, et al.

AFFIDAVIT

I, Julius W. Hobson, being duly sworn, depose and say:

1. This is an affidavit in support of a motion for leave to proceed in forma pauperis in the Supreme Court of the United States in a proceeding in which I am one of the appellants. The proceeding is an appeal from a final judgment of a three-judge district court, convened pursuant to 28 U.S.C. §§ 2282, 2284, which refused to declare unconstitutional and enjoin the operation of District of Columbia Code § 31-101, which authorizes the District Judges of the United States District Court for the District of Columbia to appoint the members of the Board of Education of the District of Columbia.

2. A separate part of this same case is still pending before a single-judge district court. That part of the case involves a number of allegations of discrimination against Negro children and poor children by the Board of Education and the school administration of the District of Columbia. The trial of that part of the case took many weeks, and was very costly.

3. This entire litigation has been financed in part by contributions from those named plaintiffs who were financially

JOHN F. HANSEN, et al.,

Plaintiffs,

vs.

I, John F. Hansen, being duly sworn, depose and say:
1. This is an affidavit in support of a motion for
leave to remove the above-captioned case to the District Court of
the District of Columbia. It is submitted that the removal is in the
interest of justice. The removal is requested under 28 U.S.C.
of a three-judge district court, convened pursuant to 28 U.S.C.
§§ 2282, 2284, which refused to declare unconstitutional and
void the operation of District of Columbia Code § 22-201,
which authorizes the District Judge of the District of
Columbia Court for the District of Columbia to appoint the
members of the Board of Education of the District of Columbia.
2. A separate part of this case is still pending
before a single-judge district court. That part of the case
involves a number of allegations of discrimination against
Negro children and was filed in the District of Columbia
and the removal jurisdiction of the District of Columbia.
The trial of that part of the case took place recently, and was
very lengthy.
3. This entire litigation has been removed in part by
complaint from cases filed separately and were separately

able to make such contributions, in part from contributions from other members of the class on whose behalf this action was brought, and in part from other citizens and organizations who voluntarily supported this case. The funds from these various sources, however, have now been totally depleted.

4. All of the appellants in this case are citizens of the United States and desire to prosecute this appeal in the United States Supreme Court.

5. Because of my extremely limited financial means, I am unable to pay the fees and costs of this appeal, or to give security therefor, and still be able to provide myself and my dependents with the necessities of life.

6. I know as a matter of my own knowledge that the other named appellants in this case are also unable, because of their extremely limited financial means, to pay the fees and costs of this appeal, or to give security therefor, and still be able to provide themselves and their dependents with the necessities of life.

7. I believe I and the other appellants are entitled to the relief sought and I am submitting this affidavit in good faith. A more detailed statement as to the grounds on which I and the other appellants believe we are entitled to relief will be set forth in the jurisdictional statement to be filed on our behalf.

Julius W. Hobson

Subscribed and sworn to before

me this _____ day of _____, 1967.

Notary Public

1. All of the specimens in this case are classified as

valued common. However, some are more locally abundant.

2. All of the specimens in this case are classified as

valued common. However, some are more locally abundant.

and my dependence with the necessities of life.

1. The first of these is the fact that the Commission has not yet received any information from the Government of the United Kingdom regarding the progress of its investigation into the alleged activities of the British Security Establishment in the United States.

7. I believe I and the other appellants are entitled to the relief sought and I am submitting this affidavit in good faith. A more detailed statement as to the grounds on which I and the other appellants believe we are entitled to relief will be submitted to the court in the form of a brief.

1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048 2049 2050 2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061 2062 2063 2064 2065 2066 2067 2068 2069 2070 2071 2072 2073 2074 2075 2076 2077 2078 2079 2080 2081 2082 2083 2084 2085 2086 2087 2088 2089 2090 2091 2092 2093 2094 2095 2096 2097 2098 2099 2100 2101 2102 2103 2104 2105 2106 2107 2108 2109 2110 2111 2112 2113 2114 2115 2116 2117 2118 2119 2120 2121 2122 2123 2124 2125 2126 2127 2128 2129 2130 2131 2132 2133 2134 2135 2136 2137 2138 2139 2140 2141 2142 2143 2144 2145 2146 2147 2148 2149 2150 2151 2152 2153 2154 2155 2156 2157 2158 2159 2160 2161 2162 2163 2164 2165 2166 2167 2168 2169 2170 2171 2172 2173 2174 2175 2176 2177 2178 2179 2180 2181 2182 2183 2184 2185 2186 2187 2188 2189 2190 2191 2192 2193 2194 2195 2196 2197 2198 2199 2200 2201 2202 2203 2204 2205 2206 2207 2208 2209 2210 2211 2212 2213 2214 2215 2216 2217 2218 2219 2220 2221 2222 2223 2224 2225 2226 2227 2228 2229 2230 2231 2232 2233 2234 2235 2236 2237 2238 2239 2240 2241 2242 2243 2244 2245 2246 2247 2248 2249 2250 2251 2252 2253 2254 2255 2256 2257 2258 2259 2260 2261 2262 2263 2264 2265 2266 2267 2268 2269 2270 2271 2272 2273 2274 2275 2276 2277 2278 2279 2280 2281 2282 2283 2284 2285 2286 2287 2288 2289 2290 2291 2292 2293 2294 2295 2296 2297 2298 2299 2300 2301 2302 2303 2304 2305 2306 2307 2308 2309 2310 2311 2312 2313 2314 2315 2316 2317 2318 2319 2320 2321 2322 2323 2324 2325 2326 2327 2328 2329 2330 2331 2332 2333 2334 2335 2336 2337 2338 2339 2340 2341 2342 2343 2344 2345 2346 2347 2348 2349 2350 2351 2352 2353 2354 2355 2356 2357 2358 2359 2360 2361 2362 2363 2364 2365 2366 2367 2368 2369 2370 2371 2372 2373 2374 2375 2376 2377 2378 2379 2380 2381 2382 2383 2384 2385 2386 2387 2388 2389 2390 2391 2392 2393 2394 2395 2396 2397 2398 2399 2400 2401 2402 2403 2404 2405 2406 2407 2408 2409 2410 2411 2412 2413 2414 2415 2416 2417 2418 2419 2420 2421 2422 2423 2424 2425 2426 2427 2428 2429 2430 2431 2432 2433 2434 2435 2436 2437 2438 2439 2440 2441 2442 2443 2444 2445 2446 2447 2448 2449 2450 2451 2452 2453 2454 2455 2456 2457 2458 2459 2460 2461 2462 2463 2464 2465 2466 2467 2468 2469 2470 2471 2472 2473 2474 2475 2476 2477 2478 2479 2480 2481 2482 2483 2484 2485 2486 2487 2488 2489 2490 2491 2492 2493 2494 2495 2496 2497 2498 2499 2500 2501 2502 2503 2504 2505 2506 2507 2508 2509 2510 2511 2512 2513 2514 2515 2516 2517 2518 2519 2520 2521 2522 2523 2524 2525 2526 2527 2528 2529 2530 2531 2532 2533 2534 2535 2536 2537 2538 2539 2540 2541 2542 2543 2544 2545 2546 2547 2548 2549 2550 2551 2552 2553 2554 2555 2556 2557 2558 2559 2560 2561 2562 2563 2564 2565 2566 2567 2568 2569 2570 2571 2572 2573 2574 2575 2576 2577 2578 2579 2580 2581 2582 2583 2584 2585 2586 2587 2588 2589 2590 2591 2592 2593 2594 2595 2596 2597 2598 2599 2600 2601 2602 2603 2604 2605 2606 2607 2608 2609 2610 2611 2612 2613 2614 2615 2616 2617 2618 2619 2620 2621 2622 2623 2624 2625 2626 2627 2628 2629 2630 2631 2632 2633 2634 2635 2636 2637 2638 2639 2640 2641 2642 2643 2644 2645 2646 2647 2648 2649 2650 2651 2652 2653 2654 2655 2656 2657 2658 2659 2660 2661 2662 2663 2664 2665 2666 2667 2668 2669 2670 2671 2672 2673 2674 2675 2676 2677 2678 2679 2680 2681 2682 2683 2684 2685 2686 2687 2688 2689 2690 2691 2692 2693 2694 2695 2696 2697 2698 2699 2700 2701 2702 2703 2704 2705 2706 2707 2708 2709 2710 2711 2712 2713 2714 2715 2716 2717 2718 2719 2720 2721 2722 2723 2724 2725 2726 2727 2728 2729 2730 2731 2732 2733 2734 2735 2736 2737 2738 2739 2740 2741 2742 2743 2744 2745 2746 2747 2748 2749 2750 2751 2752 2753 2754 2755 2756 2757 2758 2759 2760 2761 2762 2763 2764 2765 2766 2767 2768 2769 2770 2771 2772 2773 2774 2775 2776 2777 2778 2779 2780 2781 2782 2783 2784 2785 2786 2787 2788 2789 2790 2791 2792 2793 2794 2795 2796 2797 2798 2799 2800 2801 2802 2803 2804 2805 2806 2807 2808

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

JULIUS W. HOBSON, INDIVIDUALLY AND ON BEHALF
OF JEAN MARIE HOBSON AND JULIUS W. HOBSON,
JR., ET AL., APPELLANTS

v.

CARL F. HANSEN, SUPERINTENDENT OF SCHOOLS OF
THE DISTRICT OF COLUMBIA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MEMORANDUM FOR APPELLEES

CHARLES T. DUNCAN,
Corporation Counsel for the
District of Columbia,
Washington, D.C., 20004.

THURGOOD MARSHALL,
Solicitor General,

CARL EARDLEY,
Acting Assistant Attorney General,

JOHN C. ELDRIDGE,
ROBERT V. ZENER,
Attorneys,
Department of Justice,
Washington, D.C., 20530.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 171 Misc.

JULIUS W. HOBSON, INDIVIDUALLY AND ON BEHALF
OF JEAN MARIE HOBSON AND JULIUS W. HOBSON,
JR., ET AL., APPELLANTS

v.

CARL F. HANSEN, SUPERINTENDENT OF SCHOOLS OF
THE DISTRICT OF COLUMBIA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MEMORANDUM FOR APPELLEES

Section 31-101 of the District of Columbia Code provides that the members of the Board of Education of the District of Columbia "shall be appointed by the United States District Court judges of the District of Columbia." In this action before a three-judge court, appellants sought (1) a declaratory judgment that Section 31-101 is unconstitutional and (2) an order enjoining further appointments under that provision, declaring the offices of the Board of Education vacant, and directing election of a new Board.^{1/} The court, in an opinion by Circuit Judge Fahy (265 F. Supp. 902), upheld Section 31-101 as authorized by both the District

^{1/} Other counts of the complaint, alleging discriminatory and illegal action by the Board in violation of appellants' rights, were referred to a single district judge for trial. He recently entered a decree enjoining defendants from discriminating in the operation of the District of Columbia public school system, and requiring certain specific steps to implement this prohibition. Hobson et al. v. Hansen et al., D.D.C. Cir. No. 82-66, June 19, 1967 (Wright, Circuit Judge, sitting by designation).

THE UNIVERSITY OF CHICAGO
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Clause of Article I of the Constitution^{2/} and the appointments clause of Article II.^{3/} Circuit Judge Wright dissented.

Section 31-101 was adopted by Congress in 1906. 34 Stat. 316. Prior thereto the Board of Education had been appointed by the District Commissioners. The Board, however, was accused of "incompetency, of weakness, of incapacity, of indifference" (40 Cong. Rec. 5760); several examples of maladministration by the Board were cited; and it was argued that an amendment vesting the appointment authority in the judges of the Supreme Court of the District of Columbia (now the United States District Court) was necessary "so that the school system may be entirely divorced from the rest of the municipal government, just as the schools are divorced from the rest of the municipal government in almost every other community * * *" (40 Cong. Rec. 5756). The proponents stated their preference for having the Board of Education elected by the people of the District (40 Cong. Rec. 5758, 5761), but believed that this was not politically feasible. Ibid.^{4/} It was argued that the system of appointment by judges had worked successfully in Philadelphia (40 Cong. Rec. 5758, 5759) and that the judges would be free from municipal politics and yet familiar with the problems of the District (40 Cong. Rec. 5758, 5762). The amendment carried (40 Cong. Rec. 5763) despite opponents' arguments that the court should not be given "political power" (40 Cong. Rec. 5759) and that the Board of Education is "of the executive department of the

^{2/} Article I, Section 8, Clause 17, authorizes Congress to "exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States * * *."

^{3/} Article II, Section 2, Clause 2, provides that "the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law or in the Heads of Departments."

^{4/} "To have the judges of the supreme court of the District appoint the trustees is the proposition which strikes me most favorably * * *, for I can not get the trustees elected, as they ought to be." 40 Cong. Rec. 5762. Another alternative to appointment by the Commissioners suggested was appointment by the President, but it was felt that the President was not sufficiently familiar with the affairs of the District and should not be burdened with the appointment of local officials. 40 Cong. Rec. 5760, 5761-5762.



District and has no relation whatever to judicial functions." 40 Cong. Rec. 5763.

1. It has long been held that the courts established by Congress for the District of Columbia may be required to decide questions which are not within the "case or controversy" limitation of Article III. Keller v. Potomac Elec. Co., 261 U.S. 428; Postum Cereal Co. v. California Fig Nut Co., 272 U.S. 693; Federal Radio Comm'n v. General Electric Co., 281 U.S. 464. Until the decision in O'Donoghue v. United States, 289 U.S. 516, this holding was based on the view that the courts of the District had been established exclusively under Article I, Section 8, Clause 17 (the District clause), rather than under Article III. See Glidden Company v. Zdanok, 370 U.S. 530, 539. In the O'Donoghue decision, this Court held that the judges of the District of Columbia federal courts^{5/} were entitled to the protection of the clause in Article III forbidding reduction in compensation. But no one suggested that all of the limitations of Article III were applicable to these courts. On the contrary, the Court indicated that the "case or controversy" limitation was not, for it reaffirmed the power of Congress to "clothe the courts of the District not only with the jurisdiction and powers of federal courts in the several States but with such authority as a State may confer on her courts." 289 U.S. at 545-546, quoting Keller v. Potomac Elec. Co., 261 U.S. 428, 442-444. Since States often delegate to their courts authority to appoint non-judicial officers, including members of school boards,^{6/} it would seem to follow that Congress may vest the same authority in the federal courts of the District of Columbia.

To be sure, the plurality opinion in Glidden Company v. Zdanok, 370 U.S. 530, 580-582, suggests that at least one aspect of the "case or controversy" limitation of Article III--"to safeguard the independence of the judicial from the other branches by confining its activities to 'cases

^{5/} O'Donoghue involved the Supreme Court of the District of Columbia, predecessor of the United States District Court, and the Court of Appeals for the District of Columbia, predecessor of the United States Court of Appeals for the District of Columbia Circuit.

^{6/} See cases collected in note 7 of the majority opinion below.

of a Judiciary nature'"--"remains fully applicable [in the District] at least to courts invested with jurisdiction solely over matters of national import." 370 U.S. at 582. However, Section 31-101 does not, in our view, infringe the independence of the federal judiciary in the District. This is not a case, like O'Donoghue, where the judges' independence is threatened by Congressional power over their salaries. And while there is a theoretical possibility that the District judges could be so burdened with administrative tasks as to impair their ability to decide cases, Congress can control the workload of federal judges by fixing the number of judges and determining the extent of federal court jurisdiction. Finally, we do not think it inevitable that the appointment of Board of Education members would compromise the ability of the court to decide cases questioning the official conduct of such members.

2. Section 31-101 is further supported by the appointments provision of Article II, which permits the Congress to "vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments." In Ex parte Siebold, 100 U.S. 371, this Court held that Congress could delegate to the United States Circuit Court authority to appoint supervisors of election, despite a contention that the duties of such supervisors were entirely executive in character:

It is no doubt usual and proper to vest the appointment of inferior officers in that department of the government, executive or judicial, or in that particular executive department to which the duties of such officers appertain. But there is no absolute requirement to this effect in the Constitution; and, if there were, it would be difficult in many cases to determine to which department an office properly belonged * * *.

100 U.S. at 397.^{7/} In Siebold, this Court further concluded that there

^{7/} The primary duty of these supervisors was to observe elections and report to the House of Representatives, so that the House could exercise its constitutional function of judging the outcome of congressional elections. 16 Stat. 435-436. With respect to this duty, the supervisors could hardly have been characterized as court-related officers. The supervisors also had power to observe and report on State and municipal elections, and the federal courts had jurisdiction to count ballots and declare winners in such elections where there were alleged deprivations of the right to vote on account of race. 16 Stat. 146. As to such elections, supervisors could be characterized as court-related officers, roughly similar to special masters. However, the elections for which the supervisors in Siebold were appointed were elections to the House of Representatives. At no point in the Siebold opinion is there any intimation that the holding is based on any relationship between the supervisors and the judiciary.

was "no such incongruity in the duty required as to excuse the courts from its performance * * *." 100 U.S. at 398.

There is similarly no incongruity between the appointment authority conferred by Section 31-101 and the judicial duties of the District Court. In enacting Section 31-101 Congress was dealing with a unique situation. Not only was there no State judiciary in the District but the District had no elected legislature or executive; and the sponsors of the legislation, while believing that direct election of the Board of Education would be preferable, found that this was not politically obtainable.^{8/} In this situation, a basic objection to involvement of the judiciary in the appointment of administrative officials--that the power to appoint should be exercised by individuals responsible to the electorate--was not pertinent. Congress could reasonably conclude that, as in Siebold, "it cannot be affirmed that the appointment of the officers in question could, with any greater propriety * * * have been assigned to any other depository of official power capable of exercising it." Ex parte Siebold, 100 U.S. 371, 398.

8/ Election of the Board of Education is not obtainable as a matter of legal right. Although appellants' complaint asks for an order directing election of the Board members, they would not be entitled to it even if Section 31-101 were held invalid. Hobson v. Tobriner, 255 F. Supp. 295 (D.D.C.), petition for writ of mandamus denied sub nom. Hobson v. Gasch, C.A. D.C. No. 20,388, (September 26, 1966), certiorari denied, 386 U.S. 914. If Section 31-101 were invalidated appellants might be entitled to an order directing appointment of the Board members by the District Commissioners, since this was the system in effect prior to the enactment of Section 31-101 in 1906. 31 Stat. 564; H.R. Rep. No. 3395, 59th Cong. 1st Sess., p. 3. Appellants, however, have not asked for such relief, and have not joined the District Commissioners as parties to this action. Alternatively, if the old law were not viewed as coming back into force, the appointment of Board members might be governed by the first provision of the appointments clause of Article II which directs the President, acting with the advice and consent of the Senate, to appoint "all officers of the United States" whose appointment is not otherwise provided for by the Constitution or congressional legislation.

1. The first part of the paper is devoted to a general discussion of the problem.

2. In the second part, we shall consider the case of a single particle.

3. The third part is devoted to the case of a system of particles.

4. In the fourth part, we shall discuss the results of our calculations.

5. The fifth part is devoted to a discussion of the physical meaning of the results.

6. The sixth part is devoted to a discussion of the experimental results.

7. The seventh part is devoted to a discussion of the theoretical results.

8. The eighth part is devoted to a discussion of the conclusions.

9. The ninth part is devoted to a discussion of the prospects of the work.

10. The tenth part is devoted to a discussion of the bibliography.

11. The eleventh part is devoted to a discussion of the references.

12. The twelfth part is devoted to a discussion of the acknowledgments.

CONCLUSION

For the foregoing reasons, we believe the judgment of the district court is correct and should be affirmed. To be sure, appellants' challenge to the constitutionality of Section 30-101 raises questions relating to the powers of Congress and the proper functions of federal courts. As a practical matter, however, these issues concern only one agency of the District of Columbia, and, even there, legislative proposals for governmental reorganization may soon moot the constitutional debate. Accordingly, it would be appropriate, in our view, to enter a judgment of summary affirmance.

Respectfully submitted.

CHARLES T. DUNCAN,
Corporation Counsel for the
District of Columbia.

THURGOOD MARSHALL,
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CARL EARDLEY,
Acting Assistant Attorney General.

JOHN C. ELDRIDGE,
ROBERT V. ZENER,
Attorneys.

JULY 1967.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

JULIUS W. HOBSON, INDIVIDUALLY AND ON BEHALF
OF JEAN MARIE HOBSON AND JULIUS W. HOBSON,
JR., ET AL., APPELLANTS

v.

CARL F. HANSEN, SUPERINTENDENT OF SCHOOLS OF
THE DISTRICT OF COLUMBIA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MEMORANDUM FOR APPELLEES

CHARLES T. DUNCAN,
Corporation Counsel for the
District of Columbia,
Washington, D.C., 20004.

THURGOOD MARSHALL,
Solicitor General,

CARL EARDLEY,
Acting Assistant Attorney General,

JOHN C. ELDRIDGE,
ROBERT V. ZENER,
Attorneys,
Department of Justice,
Washington, D.C., 20530.

1. The first part of the paper is devoted to a discussion of the general principles of the theory of the structure of the atom.

2. The second part of the paper is devoted to a discussion of the general principles of the theory of the structure of the atom.

3. The third part of the paper is devoted to a discussion of the general principles of the theory of the structure of the atom.

4. The fourth part of the paper is devoted to a discussion of the general principles of the theory of the structure of the atom.

5. The fifth part of the paper is devoted to a discussion of the general principles of the theory of the structure of the atom.

6. The sixth part of the paper is devoted to a discussion of the general principles of the theory of the structure of the atom.

7. The seventh part of the paper is devoted to a discussion of the general principles of the theory of the structure of the atom.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 171 Misc.

JULIUS W. HOBSON, INDIVIDUALLY AND ON BEHALF
OF JEAN MARIE HOBSON AND JULIUS W. HOBSON,
JR., ET AL., APPELLANTS

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THE DISTRICT OF COLUMBIA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MEMORANDUM FOR APPELLEES

Section 31-101 of the District of Columbia Code provides that the members of the Board of Education of the District of Columbia "shall be appointed by the United States District Court judges of the District of Columbia." In this action before a three-judge court, appellants sought (1) a declaratory judgment that Section 31-101 is unconstitutional and (2) an order enjoining further appointments under that provision, declaring the offices of the Board of Education vacant, and directing election of a new Board.^{1/} The court, in an opinion by Circuit Judge Fahy (265 F. Supp. 902), upheld Section 31-101 as authorized by both the District

^{1/} Other counts of the complaint, alleging discriminatory and illegal action by the Board in violation of appellants' rights, were referred to a single district judge for trial. He recently entered a decree enjoining defendants from discriminating in the operation of the District of Columbia public school system, and requiring certain specific steps to implement this prohibition. Hobson et al. v. Hansen et al., D.D.C. Cir. No. 82-66, June 19, 1967 (Wright, Circuit Judge, sitting by designation).

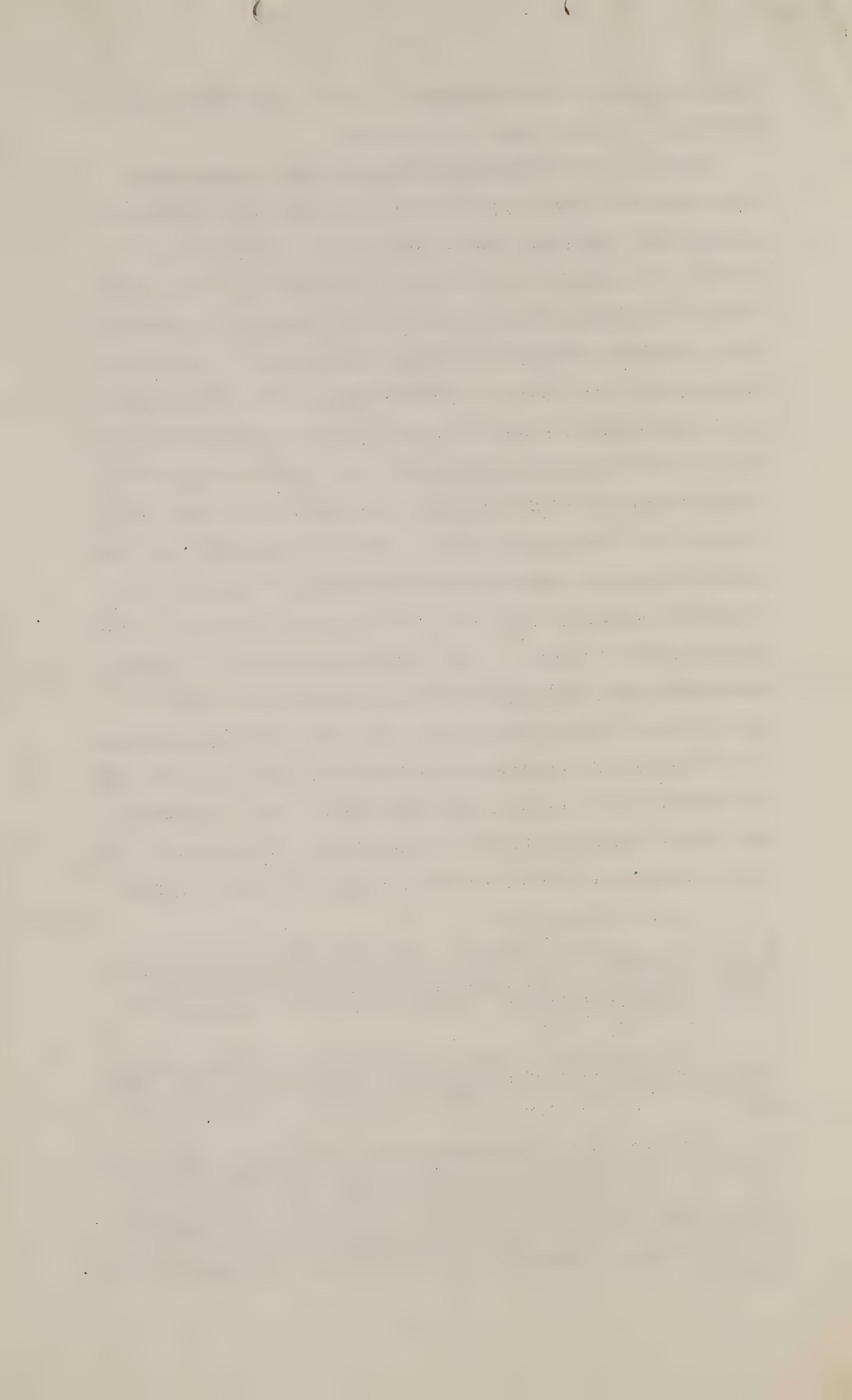
Clause of Article I of the Constitution^{2/} and the appointments clause of Article II.^{3/} Circuit Judge Wright dissented.

Section 31-101 was adopted by Congress in 1906. 34 Stat. 316. Prior thereto the Board of Education had been appointed by the District Commissioners. The Board, however, was accused of "incompetency, of weakness, of incapacity, of indifference" (40 Cong. Rec. 5760); several examples of maladministration by the Board were cited; and it was argued that an amendment vesting the appointment authority in the judges of the Supreme Court of the District of Columbia (now the United States District Court) was necessary "so that the school system may be entirely divorced from the rest of the municipal government, just as the schools are divorced from the rest of the municipal government in almost every other community * * *" (40 Cong. Rec. 5756). The proponents stated their preference for having the Board of Education elected by the people of the District (40 Cong. Rec. 5758, 5761), but believed that this was not politically feasible. ^{4/}Ibid. It was argued that the system of appointment by judges had worked successfully in Philadelphia (40 Cong. Rec. 5758, 5759) and that the judges would be free from municipal politics and yet familiar with the problems of the District (40 Cong. Rec. 5758, 5762). The amendment carried (40 Cong. Rec. 5763) despite opponents' arguments that the court should not be given "political power" (40 Cong. Rec. 5759) and that the Board of Education is "of the executive department of the

^{2/} Article I, Section 8, Clause 17, authorizes Congress to "exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States * * *."

^{3/} Article II, Section 2, Clause 2, provides that "the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law or in the Heads of Departments."

^{4/} "To have the judges of the supreme court of the District appoint the trustees is the proposition which strikes me most favorably * * *, for I can not get the trustees elected, as they ought to be." 40 Cong. Rec. 5762. Another alternative to appointment by the Commissioners suggested was appointment by the President, but it was felt that the President was not sufficiently familiar with the affairs of the District and should not be burdened with the appointment of local officials. 40 Cong. Rec. 5760, 5761-5762.



District and has no relation whatever to judicial functions." 40 Cong. Rec. 5763.

1. It has long been held that the courts established by Congress for the District of Columbia may be required to decide questions which are not within the "case or controversy" limitation of Article III. Keller v. Potomac Elec. Co., 261 U.S. 428; Postum Cereal Co. v. California Fig Nut Co., 272 U.S. 693; Federal Radio Comm'n v. General Electric Co., 281 U.S. 464. Until the decision in O'Donoghue v. United States, 289 U.S. 516, this holding was based on the view that the courts of the District had been established exclusively under Article I, Section 8, Clause 17 (the District clause), rather than under Article III. See Glidden Company v. Zdanok, 370 U.S. 530, 539. In the O'Donoghue decision, this Court held that the judges of the District of Columbia federal courts^{5/} were entitled to the protection of the clause in Article III forbidding reduction in compensation. But no one suggested that all of the limitations of Article III were applicable to these courts. On the contrary, the Court indicated that the "case or controversy" limitation was not, for it reaffirmed the power of Congress to "clothe the courts of the District not only with the jurisdiction and powers of federal courts in the several States but with such authority as a State may confer on her courts." 289 U.S. at 545-546, quoting Keller v. Potomac Elec. Co., 261 U.S. 428, 442-444. Since States often delegate to their courts authority to appoint non-judicial officers, including members of school boards,^{6/} it would seem to follow that Congress may vest the same authority in the federal courts of the District of Columbia.

To be sure, the plurality opinion in Glidden Company v. Zdanok, 370 U.S. 530, 580-582, suggests that at least one aspect of the "case or controversy" limitation of Article III--"to safeguard the independence of the judicial from the other branches by confining its activities to 'cases

^{5/} O'Donoghue involved the Supreme Court of the District of Columbia, predecessor of the United States District Court, and the Court of Appeals for the District of Columbia, predecessor of the United States Court of Appeals for the District of Columbia Circuit.

^{6/} See cases collected in note 7 of the majority opinion below.

of a Judiciary nature'"--"remains fully applicable [in the District] at least to courts invested with jurisdiction solely over matters of national import." 370 U.S. at 582. However, Section 31-101 does not, in our view, infringe the independence of the federal judiciary in the District. This is not a case, like O'Donoghue, where the judges' independence is threatened by Congressional power over their salaries. And while there is a theoretical possibility that the District judges could be so burdened with administrative tasks as to impair their ability to decide cases, Congress can control the workload of federal judges by fixing the number of judges and determining the extent of federal court jurisdiction. Finally, we do not think it inevitable that the appointment of Board of Education members would compromise the ability of the court to decide cases questioning the official conduct of such members.

2. Section 31-101 is further supported by the appointments provision of Article II, which permits the Congress to "vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments." In Ex parte Siebold, 100 U.S. 371, this Court held that Congress could delegate to the United States Circuit Court authority to appoint supervisors of election, despite a contention that the duties of such supervisors were entirely executive in character:

It is no doubt usual and proper to vest the appointment of inferior officers in that department of the government, executive or judicial, or in that particular executive department to which the duties of such officers appertain. But there is no absolute requirement to this effect in the Constitution; and, if there were, it would be difficult in many cases to determine to which department an office properly belonged * * *.

^{1/}
100 U.S. at 397. In Siebold, this Court further concluded that there

^{1/} The primary duty of these supervisors was to observe elections and report to the House of Representatives, so that the House could exercise its constitutional function of judging the outcome of congressional elections. 16 Stat. 435-436. With respect to this duty, the supervisors could hardly have been characterized as court-related officers. The supervisors also had power to observe and report on State and municipal elections, and the federal courts had jurisdiction to count ballots and declare winners in such elections where there were alleged deprivations of the right to vote on account of race. 16 Stat. 146. As to such elections, supervisors could be characterized as court-related officers, roughly similar to special masters. However, the elections for which the supervisors in Siebold were appointed were elections to the House of Representatives. At no point in the Siebold opinion is there any intimation that the holding is based on any relationship between the supervisors and the judiciary.

was "no such incongruity in the duty required as to excuse the courts from its performance * * *." 100 U.S. at 398.

There is similarly no incongruity between the appointment authority conferred by Section 31-101 and the judicial duties of the District Court. In enacting Section 31-101 Congress was dealing with a unique situation. Not only was there no State judiciary in the District but the District had no elected legislature or executive; and the sponsors of the legislation, while believing that direct election of the Board of Education would be preferable, found that this was not politically obtainable.^{8/} In this situation, a basic objection to involvement of the judiciary in the appointment of administrative officials--that the power to appoint should be exercised by individuals responsible to the electorate--was not pertinent. Congress could reasonably conclude that, as in Siebold, "it cannot be affirmed that the appointment of the officers in question could, with any greater propriety * * * have been assigned to any other depository of official power capable of exercising it." Ex parte Siebold, 100 U.S. 371, 398.

^{8/} Election of the Board of Education is not obtainable as a matter of legal right. Although appellants' complaint asks for an order directing election of the Board members, they would not be entitled to it even if Section 31-101 were held invalid. Hobson v. Tobriner, 255 F. Supp. 295 (D.D.C.), petition for writ of mandamus denied sub nom. Hobson v. Gasch, C.A. D.C. No. 20,388, (September 26, 1966), certiorari denied, 386 U.S. 914. If Section 31-101 were invalidated appellants might be entitled to an order directing appointment of the Board members by the District Commissioners, since this was the system in effect prior to the enactment of Section 31-101 in 1906. 31 Stat. 564; H.R. Rep. No. 3395, 59th Cong. 1st Sess., p. 3. Appellants, however, have not asked for such relief, and have not joined the District Commissioners as parties to this action. Alternatively, if the old law were not viewed as coming back into force, the appointment of Board members might be governed by the first provision of the appointments clause of Article II which directs the President, acting with the advice and consent of the Senate, to appoint "all officers of the United States" whose appointment is not otherwise provided for by the Constitution or congressional legislation.



CONCLUSION

For the foregoing reasons, we believe the judgment of the district court is correct and should be affirmed. To be sure, appellants' challenge to the constitutionality of Section 30-101 raises questions relating to the powers of Congress and the proper functions of federal courts. As a practical matter, however, these issues concern only one agency of the District of Columbia, and, even there, legislative proposals for governmental reorganization may soon moot the constitutional debate. Accordingly, it would be appropriate, in our view, to enter a judgment of summary affirmance.

Respectfully submitted.

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JULY 1967.

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Respectfully submitted,

CHARLES T. DENHAM,
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JULY 1967.

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ARTHUR KINOY
OF COUNSEL TO THE FIRM

June 4, 1968

Ralph Temple, Esq.,
National Capital Area Civil Liberties Union,
1424 16th Street, N.W.
Washington, D.C.

Re: Hobson v. Hansen

Dear Ralph:

Pursuant to your request, this is to inform you that appellees hereby consent to your application to intervene amicus curiae in the above appeals which are presently pending in the United States Court of Appeals for the District of Columbia Circuit.

As I told you, appellees' brief is due on June 11 and argument is set for 9:30 a.m. on June 26th. I have moved for one hour argument instead of the usual thirty minutes. In their brief, appellants have raised the following points:

A. Preliminary issues

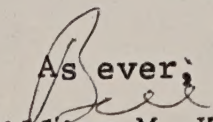
1. The parents and Hansen as an individual have standing to intervene.
2. Hansen and Smuck, in their official capacities, have standing to appeal.
3. The separation of the first cause of action was improper.
4. Judge Wright should have recused himself.

B. The Merits

1. The neighborhood school policy is constitutional.
2. The track system is constitutional.
3. The compulsory teacher reassignment is improper.

If I can help you in any way, please let me know.

wmk/st

As ever,

William M. Kunstler

